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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

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11 MY MEDICAL LOAN, INC., a ) CASE NO. CV 10-4121-DMG(AGR<sub>x</sub>)  
12 California corporation, )  
13 Plaintiff, )  
14 vs. )  
15 MEDCHOICE FINANCIAL, LLC, a ) PLAINTIFF'S REQUEST FOR  
16 Florida limited liability company; ) DISMISSAL WITHOUT  
17 MEDCHOICE FINANCIAL, LLC, a ) PREJUDICE PURSUANT TO  
18 Delaware limited liability corporation; ) FEDERAL RULE OF CIVIL  
19 PHILIP HALL, a Florida citizen; ) PROCEDURE 41(a)(2)  
20 MICHELO NATURILE, a Florida )  
21 citizen, )  
22 Defendants. )  
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1           On March 23, 2012, Plaintiff My Medical Loan, Inc. (“Plaintiff”) filed a  
 2 response to the Court’s Order To Show Cause Re Dismissal For Lack Of  
 3 Prosecution in which it explained to the Court that the parties had worked to find an  
 4 amicable resolution over the past year and had finally reached an agreement in  
 5 principal. However, when the parties attempted to reduce their agreement to writing  
 6 Defendants MedChoice Financial LLC, Phillip Hall and Michelo Naturile  
 7 (“Defendants”) attempted to take advantage of the fact that Plaintiff faced dismissal  
 8 of this action if a settlement could not be finalized and imposed manifestly  
 9 unreasonable new terms that were not contemplated during the prior settlement  
 10 negotiations. As a result, the parties were unfortunately unable to agree upon all  
 11 terms of a settlement.

12           Federal Rule of Civil Procedure 41(a)(2) (“Rule 41”) vests the district court  
 13 with broad discretion to dismiss an action at the plaintiff’s request “upon such terms  
 14 and conditions as the court deems proper.” Fed. R. Civ. Proc. 41(a)(2). While the  
 15 Court maintains discretion to dismiss with or without prejudice, the default under  
 16 Rule 41 is a dismissal without prejudice. While Plaintiff steadfastly believes that it  
 17 can prove that Defendants breached their contract with Plaintiff and owe Plaintiff  
 18 hundreds of thousands of dollars, the tenuous financial position that Defendants are  
 19 allegedly in makes the further prosecution of this action financially unfeasible for  
 20 Plaintiff. Plaintiff does not desire to incur substantial further litigation costs only to  
 21 obtain an uncollectable judgment. However, Plaintiff should not lose its ability to  
 22 reassert its claims in the future. Defendants have repeatedly threatened to file bogus  
 23 counterclaims against Plaintiff. Tellingly, Defendants never asserted such claims.  
 24 Nevertheless, if Defendants suddenly find the financial resources to assert such  
 25 claims Plaintiff needs to preserve its ability to reassert the claims presented in this  
 26 action, or at a minimum use these claims as an offset.

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Given the foregoing, Plaintiff respectfully requests that the Court exercise its discretion under Rule 41 and dismiss this matter without prejudice.

DATED: April 19, 2012

KINSELLA WEITZMAN ISER KUMP &  
ALDISERT LLP

By: /s/ Gregory Aldisert  
Gregory Aldisert  
Attorneys for Plaintiff

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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 At the time of service, I was over 18 years of age and **not a party to this**  
4 **action.** I am employed in the County of Los Angeles, State of California. My  
business address is 808 Wilshire Boulevard, 3rd Floor, Santa Monica, CA 90401.

5 On April 19, 2012, I served true copies of the following document(s)  
6 described as **PLAINTIFF'S REQUEST FOR DISMISSAL WITHOUT**  
**PREJUDICE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE**  
41(a)(2) on the interested parties in this action as follows:

7 Bradley I. Kramer, M.D., Esq.  
8 The Trial Law Offices of Bradley I. Kramer, M.D., Esq.  
10866 Wilshire Boulevard, Suite 1400  
9 Los Angeles, CA 90024  
Fax: (866) 289-2771  
10 Email: bkramer@biklaw.com

11 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package  
12 addressed to the persons at the addresses listed in the Service List and placed the  
envelope for collection and mailing, following our ordinary business practices. I am  
13 readily familiar with Kinsella Weitzman Iser Kump & Aldisert LLP's practice for  
collecting and processing correspondence for mailing. On the same day that the  
14 correspondence is placed for collection and mailing, it is deposited in the ordinary  
course of business with the United States Postal Service, in a sealed envelope with  
postage fully prepaid.

15 **BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed  
16 the document(s) with the Clerk of the Court by using the CM/ECF system.  
17 Participants in the case who are registered CM/ECF users will be served by the  
CM/ECF system. Participants in the case who are not registered CM/ECF users will  
18 be served by mail or by other means permitted by the court rules.

19 I declare under penalty of perjury under the laws of the United States of  
America that the foregoing is true and correct and that I am employed in the office  
of a member of the bar of this Court at whose direction the service was made.

20 Executed on April 19, 2012, at Santa Monica, California.

22 */s/ Lynne Thompson*  
23 Lynne Thompson

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